IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8847 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUDHIRBHAI CHANDUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BATT, Ld. APP for Respondent No. 1 TO 3.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, challenging the legality of order of detention dated 26.11.1999 passed by respondent no.2 on the ground that the petitioner is a dangerous person within the meaning of section 2(c) of

the Gujarat Prevention of Anti-social Activities Act, 1985, (In short `the Act') and further that activities of the petitioner are prejudicial to the maintenance of the public order.

2. As per case of the detaining authority, four different criminal cases are lodged against the detenu in different Police Stations of Bhavnagar City. Out of that four cases, two cases are under the process of investigation while two cases are pending in the Criminal Court for trial. The detaining authority has placed reliance on statements of three witnesses of which identity has not been disclosed by claiming privilege under sec.9(2) of the Act for he having been subjectively satisfied before passing detention order.

3. Learned advocate for the petitioner has drawn my attention to three different statements of witnesses whose name and identity have been not disclosed to the detenu. These three such statements were recorded by Police Inspector on 22.11.99. That statements were verified by the Sub-Divisional Police Officer on 24.11.99. From papers it appears that Respondent No.2 i.e. the District Magistrate, wrote the words "verified the contents", in the margin of statement of each such witness on 26.11.99 and on that very day he passed the order of detention which came to be executed on 27.11.99.

Ms.Subhadra Patel, learned advocate for the petitioner has argued that this short-cut method of putting endorsement of "verification", itself shows that the detaining authority has not applied his mind before passing an order of detention. She has cited a authority of Zakir Rahim Nagori Vs. District Magistrate, Mehsana reported in 1996(1) GLH 300. Looking to the facts of that cited case, in that case the detaining authority had only put an endorsement in form of one word "verified" below statements of such witnesses. This Court has held that the claim of privilege made by the detaining authority on the basis of such endorsement in one word or in one line is not genuine and therefore the detention order is vitiated only on that ground and ultimately this Court held that continued detention on the basis of such statements of witnesses is illegal, and therefore, keeping in mind that legal position in this case, the detention order which is challenged in this writ petition ex facie appears to be bad in law and illegal. On relying aforesaid authority, this petition deserves to be allowed and the order which is challenged in this writ petition deserves to be quashed and set aside.

4. Here in this case, none of the respondents has filed any written reply or affidavit. This Court has deprecated the method of not filing the written reply in the case of Special Civil Application No.6322 of 1999 decided on 11th February, 2000.

5. In view of discussion made hereinabove, the order of detention which is challenged in this Special Civil Application is bad in law and is required to be quashed and set aside. Accordingly, the detention order dated 26.11.1999 passed by respondent No.2 in respect of petitioner is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained for any other criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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